In the Supreme Court of the United States

No. 125

OCTOBER TERM, 1958

HENRY H. PLEASANT,

Petitioner,

vs.

CLEVELAND BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

S. BURKE WESTON,
Terminal Tower, Cleveland, Ohio,

RUSSELL C. GRAHAME,
Midland Bldg., Cleveland, Ohio,

ROBERT J. GROGAN,
Leader Bldg., Cleveland, Ohio,

Attorneys for Respondent.

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FACTS.

Respondent cannot adopt petitioner's "statement of the case." Petitioner's statement of the facts contains much that is irrelevant and incorrect. Moreover, it is largely argumentative.

A precise and accurate statement of the facts is found in the opinion of the Supreme Court of Ohio in *The Cleveland Bar Association v. Pleasant*, 167 Ohio St. 325, 148 N. E. 2d 493 (1958). The Ohio Supreme Court summarized the facts as follows:

> "Henry H. Pleasant was admitted to the Bar of the state of Ohio in 1931 and has been practicing law ever since that date, except that in 1941 he was suspended from practice for eight months by the Common Pleas Court of Cuyahoga County.
>
> In 1949, much of Pleasant's practice consisted of Probate Court work.

On February 16, 1949, one William A. Wright, whom Pleasant had known since 1944 but had never represented, died intestate.

A Bessie Hansen called Pleasant to come to a funeral home, which he did, taking with him an application for the appointment of an administrator. Upon arrival at the funeral home, he met Hansen and two others who claimed to be second cousins of the deceased. Pleasant had never before known these people and took it for granted that they were second cousins. These second cousins requested Pleasant that he be appointed administrator, they signed waivers on the application for appointment, and, on February 19, Pleasant obtained such appointment.

On February 20, Pleasant and the second cousins went to the deceased's house to search for a possible will, bankbooks, or papers.

Shortly thereafter, a woman by the name of Helen Pavloski came to Pleasant's office and claimed to have been the commonlaw wife of the deceased, and a few days later she returned with a young man whom she claimed was her son by the deceased.

Pleasant told her he would not recognize her claim and if she wished to press the matter she would have to obtain a lawyer and have the court decide.

On February 22, Pleasant prepared a petition to determine heirship, an application to determine succession tax, and a petition to sell real estate.

About two months after Pleasant's appointment as administrator, William Wright came to Pleasant's office and claimed to be a friend of the family. About 10 days later, Wright returned and claimed to be a first cousin of the deceased.

This happened between March 10 and 15.

The petition to determine heirship was not filed until March 21, 1949.

Pleasant did not advise Wright to obtain a lawyer to represent him as he had done with reference to Pavloski.

Pleasant wrote letters to England and elsewhere and eventually obtained a birth certificate on May 15, 1949, establishing that William Wright was the first cousin of the deceased.

On May 24, 1949, Pleasant amended his petition to determine heirship by adding, in longhand, the following, 'Unknown heirs, devisees, legatees, administrators, executors of William A. Wright, deceased, and Agnes Boltz,' and in addition the following was written, 'William Wright, new party deft.'

The petition to sell real estate, which was prepared on February 22, 1949, but not filed until March 22, 1949, failed to set forth the claim and interest of Willian. Wright as first cousin, but was amended May 24, 1949, by adding 'William Wright, new defendant.'

On June 3, 1949, there was a hearing on the petition to determine heirship, at which time William Wright was found to be the sole heir, and the real estate was ordered sold. On the same date, in Pleasant's office, William Wright discussed with him a new claim made by Pavloski for alleged services. Such claim had been filed on May 19, and, although Pleasant denied that he agreed to act as Wright's individual attorney, apparently, according to testimony Pleasant gave in a previous hearing, he had agreed to be Wright's lawyer with reference to the Pavloski claim.

On September 20, 1949, Pleasant and Wright signed an agreement, which stated that Wright *had* retained and employed Pleasant to act for and on his behalf in various legal matters pertaining to the estate of the deceased, and that Wright *had* agreed to pay Pleasant 40 per cent of whatever sums Wright might receive from the estate.

Based upon the wording of the agreement, an inference can be drawn that it was simply a written memorandum of an agreement entered into long before, and such inference, of course, is strengthened by the fact that, although Wright had told Pleasant before March 15 that he was a first cousin of the deceased, and the petition to determine heirship was filed on March 24, Wright was not made a defendant in such petition until May 24.

The final account filed in the administration of the estate shows administrator's fees of $235, and that William Wright was paid $3,612.10.

The final account was prepared on September 20, 1949, and, on September 21, Pleasant and Wright went to the Second Federal Savings & Loan, whereupon Wright was given a check for $3,612.10, Pleasant being designated as the maker. The check was approved by an officer of the Second Federal Savings & Loan, and then two checks were issued, one to Pleasant for $1,444.84, being 40 per cent of $3,612.10, and the other to Wright for the balance of $2,167.26, or 60 per cent.

The final account does not show that Pleasant received 40 per cent of the estate, nor was it ever brought to the court's attention.

As a result of the proceedings in the settlement of the estate, the Probate Court of Cuyahoga County found that Pleasant had perpetrated fraud upon it, and he was held in contempt. The matter finally reached this Court in the case of *In re Estate of Wright*, 165 Ohio St., 15, 133 N. E. (2d), 350, where this Court held in the syllabus as follows:

"1. It is fundamental principle of law that, where parties having different interests are involved, no lawyer can represent or receive compensation from such parties without a full disclosure, to all the parties involved, of his dual representation

and the arrangements as to the compensation to be received therefrom.

'2. Where an attorney is administrator of an estate and is likewise acting as attorney in such administration, in the absence of a full disclosure concerning an arrangement for compensation from a claimant against the estate and the consent of all interested parties, he impliedly represents that he has no such arrangement.

'3. Where an attorney, who is administrator of an estate, enters into a contract with a claimant against such estate for a percentage of the proceeds which such claimant may receive from the estate, makes no disclosure of such arrangement to the Probate Court in whose jurisdiction such estate is being administered, and such court proceeds to confirm the final account of such administrator, which it probably would not have done had it known of the arrangement, such administrator thereby perpetrates a fraud upon the court, for which the order confirming the final account may be vacated and which may constitute a direct contempt upon the court punishable under Section 2705.01, Revised Code.'"

After the decision in the *Wright* case, *supra*, a committee appointed by The Cleveland Bar Association and acting for the Association filed a petition against Henry H. Pleasant pursuant to Rule XXVII of the Rules of Practice of the Supreme Court of Ohio. Under Rule XXVII a hearing was held by a panel of three, appointed by the Board of Commissioners on Grievances and Discipline. The panel recommended to the Board that the petitioner be suspended from the practice of law for an indefinite period of time. The Board then made findings of fact and a recommendation to the Supreme Court of Ohio that "Henry H.

Pleasant, be suspended from the practice of law for an indefinite period."

Subsequently the Supreme Court of Ohio issued an order upon Henry H. Pleasant to show cause why the recommendation of the Board should not be confirmed. Objections were filed and then briefs submitted by both petitioner and The Cleveland Ear Association. On March 5, 1958, following oral argument, the Supreme Court of Ohio confirmed the report of the Board and entered judgment accordingly.

The petitioner next filed an application for re-hearing before the Supreme Court of Ohio. The application was denied and subsequently the petitioner filed a petition for writ of certiorari in this Court.

ISSUES.

Petitioner's brief lists a vast number of questions for review, many of which are irrelevant to the issues of this case, quite apart from their relationship to any matter with which this Court would be concerned.

In summary, the petitioner contends (a) that the Supreme Court of Ohio has no power to act; (b) that Rule XXVII of the Supreme Court of Ohio is invalid, and (c) that the entire proceeding involving Henry H. Pleasant is unconstitutional.

It would extend this brief beyond reason to detail the inaccuracies with reference to the questions presented and comments in reference thereto. A few examples will suffice to indicate what we mean:

1. Contrary to the statement in 2(b), pages 3 and 4 of petitioner's brief, that the petitioner's right to appear before the Supreme Court is only a matter of grace, is

Paragraph 16 of Rule XXVII, pages 7(a) and 8(a) of petitioner's brief, which states that the Supreme Court of Ohio "*shall* issue to the Respondent an order to show cause" before the Supreme Court of Ohio "why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered."

2. Contrary to the statement in 2(d), page 4 of petitioner's brief, that "petitioner at no time may appear in person, or by counsel, before the Board of Commissioners," Paragraph 34 of the Rule provides that Respondent may be represented by counsel at all hearings, and Paragraph 14 of the Rule provides for further hearing before the Board, upon order of the Board.

The only issues pertinent to a petition for a writ of certiorari are:

1. Rule XXVII of the Supreme Court of Ohio does not violate the separation of power provisions of the Ohio or United States Constitutions.

2. Ohio statutes do not confer judicial powers upon the courts of Ohio.

3. The Supreme Court of Ohio, having power to admit attorneys to practice, is the only body which may discipline, remove and reinstate them.

4. Petitioner has not been deprived of his rights under the Fourteenth Amendment.

ARGUMENT.

(1) Rule XXVII of the Supreme Court of Ohio Does Not Violate the Separation of Power Provisions of the Ohio or United States Constitutions.

Petitioner contends that Rule XXVII usurps the legislative power, as expressed in Sections 4705.02-4705.04, Ohio Rev. Code.

Article IV, Section 1 of the constitution of Ohio reads:

> "The judicial power of the state is vested in the supreme court, courts of appeals, courts of common pleas, court of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law. (As amended 9/3/12.)"

By the same token, the legislative power is vested in the general assembly, pursuant to Article II, Section 1.

If Rule XXVII nullifies any one or all of the statutes, it is not unconstitutional. If respondent's contention is valid concerning nullification, it must be upon the theory that jurisdiction over affairs of disbarment and discipline of attorneys belongs to the legislature. There is no authority to support this contention. The authorities are to the contrary.

> "The Supreme Court of Ohio has inherent jurisdiction over proceedings to disbar an attorney resulting as an incident of its organization as a court, as well as from its power to admit to the bar." *In Re Thatcher*, 80 Ohio St. 492, 89 N. E. 39 (1909).

The report of the *Thatcher* case covers 183 pages. For our purposes here, we quote below an excellent summary from an article in the University of Cincinnati Law Review:

> "It has generally been held, in Ohio at least, that the power to admit to the bar, and to suspend or disbar from practice, is a judicial function. In 1909 one Thatcher was summoned to the bar of the Supreme

Court, and, after hearing, was ordered disbarred. He applied for reinstatement and was refused. Later he was disbarred in the Federal Courts. He then applied to the Legislature of Ohio for relief and that body passed an act conferring upon him all the powers of an attorney and counsellor at law. Subsequently, he appeared as counsel for a plaintiff in the Common Pleas Court of his county. The defense objected to his presence as attorney. On a hearing of this objection, the court held that the legislature could not exercise judicial power, and refused to allow him to appear as attorney in the court. He then applied to the Circuit Court for a writ of mandamus to The Common Pleas Court to require that court to permit him to practice. The Circuit Court refused to issue the writ, basing its decision upon the doctrine of separation of powers. It thus appears that the power of the courts to control the bar cannot be infringed by the legislature. However, the legislature may regulate the procedure by which disbarment proceedings shall be regulated." *Woodbridge, Frederick*, "A History of Separation of Powers in Ohio," 13 *U. C. R.* 191, pages 282-283.

The inherent power of the courts with reference to disbarment, suspension or discipline of attorneys was reaffirmed in *In Re McBride*, 164 Ohio St. 419, 132 N. E. 2d 113 (1956). The first four paragraphs of the syllabus read:

"1. The power to admit attorneys to the practice of law and to disbar, suspend or otherwise discipline them after admission rests inherently in the judicial branch of the government.

2. The legislative branch may provide by statute standards and qualifications for admission to the bar and methods for the initiation and conduct of proceedings to disbar, suspend or otherwise discipline attorneys for specified causes, but such legislation is

to be interpreted as an aid to and not as a limitation on the power of the judicial branch in these respects.

3. Statutes authorizing the disbarment, suspension or discipline of attorneys on stated grounds do not operate as a restriction on the general powers of courts over attorneys, who are their officers, to disbar, suspend or otherwise discipline them on grounds other than those specified by statute.

4. The inherent powers of courts to disbar, suspend or otherwise discipline attorneys are not affected by recognizing and following the regulations and practice prescribed by statute on the subject."

Obviously, Rule XXVII does not violate the Ohio Constitution with reference to separation of powers.

(2) Ohio Statutes Do Not Confer Judicial Powers on the Courts of Ohio.

If the Ohio statutes above cited are interpreted as conferring judicial power on the Courts of Ohio, they are unconstitutional. The legislature may set forth procedures but, as we have seen, the power to discipline is inherently a judicial one.

While the Supreme Court of Ohio has recognized the legislature's right to set forth procedures and grounds for disbarment, it has recognized the legislative power as regulative only. As recently as 1956 in *In Re McBride*, *supra*, this Court held that statutory grounds for discipline or removal are not exclusive.

Although there may be conflict and lack of clarity in some of the decisions, some Ohio courts have held that the statutes are unconstitutional insofar as they confer original jurisdiction on the courts of appeal to disbar an attorney. The original jurisdiction of the courts of appeal is confined by the constitution to extraordinary actions.

See *In Re Strong*, 27 O. C. A. 257 ___ N. E. ___ (1917); *In Re Meck*, 51 Ohio App. 237, 200 N. E. 478 (1935).

The fact that the legislature has declared itself as a matter of general welfare and public policy that attorneys be disciplined for improper acts does not mean that it has the constitutional power to compel the courts to act or to compel them to act in a particular manner in the exercise of their judicial functions.

Rule XXVII, Paragraph 4, refers to "all proceedings" relative to the discipline of attorneys.

If this paragraph of the rule means that all disbarment proceedings must be brought only before the Board as provided under the rule or, if it is referring only to cases that are brought before the Board, then, in either case, it is not unconstitutional.

Nothing in the Rule takes away the right of the lower courts to entertain summary proceedings against attorneys for contempt. Moreover activity on the part of local bar associations is retained as an essential part of the rule.

In the case of *In Re Beakley*, 107 P. 2d 1097 (1940), the Supreme Court of Washington held that rules adopted by the Supreme Court succeed statutory procedures. In that case an attorney claimed that disbarment proceedings had been brought against him by virtue of a statute. He claimed the statute was unconstitutional because it made no provision for jury trial. The Supreme Court of Washington said at page 1098:

> "The proceedings against him were not carried on under those sections of the statute, but in accordance with the rules for discipline of attorneys adopted by the board of governors of the state bar association and approved by this court. * * * These rules succeed the statutory procedure of which respondent claims. * * *"

(3) The Supreme Court of Ohio, Having the Power to Admit Attorneys to Practice, Is the Only Body Which May Discipline, Remove and Reinstate Them.

As we have seen in the *McBride* case, *supra*, the Supreme Court of Ohio has inherent power to admit attorneys to the practice of law. Clearly this inherent power carries with it an exclusive power. This is even recognized by the legislature in Section 4705.01, Ohio Rev. Code. Obviously, should the legislature pass a statute endeavoring to take away such power from the Supreme Court, it is not difficult to imagine that such an effort would be declared unconstitutional.

It is inconceivable that the power to discipline, disbar and readmit attorneys should be left to a myriad of procedures in a myriad of bodies throughout the state.

Decisions in several other states likewise have confirmed the inherent power of their highest court.

In re Brown, 264 N. W. 521 (S. Ct. of S. D., 1936); *In re De Caro*, 262 N. W. 132 (S. Ct. of Iowa, 1935); *Illinois State Bar Ass'n vs. People's Stock Yards State Bank*, 176 N. E. 901 (S. Ct. of Ill., 1931); *Delaware Optometric Corporation vs. Sherwood*, 128 A. 2d 812 (S. Ct. of Dela., 1957); *In re Roon*, 75 N. E. 2d 278 (S. Ct. of Ill., 1947); *In re Watson*, 296 P. 2d 254 (S. Ct. of Nev., 1955); *Opinion of the Justices*, 180 N. E. 725 (Mass. Supreme Judicial Court, 1932).

An analogous situation to the one before us occurred in *In re Bruen*, 172 P. 1152 (1918). The Supreme Court of Washington considered the validity of an act of the legislature which gave to the Board of Law Examiners the power to render a final order of disbarment. The court held that the legislative act was unconstitutional insofar as it granted such power to the Board and held that the

Board's power would be confined to hearings and recommendations to the Supreme Court.

In overruling a previous case the Court said at page 1155:

> "We are of the opinion that this court, having been exclusively vested with the power of admitting attorneys to practice, may also be exclusively vested with the power of disbarring attorneys from practice."

Surely, the legislature must be limited to establishing procedures that are related to the power that the Supreme Court of Ohio decides to exercise in matters of disbarment and discipline. The inherent power of that Court carries with it the power to state and enforce Rule XXVII.

See also *Cornett v. State*, 53 N. W. 2nd 747 (1952) in which the Supreme Court of Nebraska held that it has the "exclusive power to disbar licensed attorneys who had violated the trust reposed in them as such."

The Supreme Court of Missouri also has promulgated rules for the discipline of attorneys. The procedure under said rules varies little from that adopted by Rule XXVII except that bar association committees may file complaints with the district court. In *In re Pate*, 107 S. W. 2nd 157 (1937) the Court of Appeals said that the Supreme Court of Missouri "has the right to delegate to the inferior tribunals of record of this state" the trial of matters involving complaints against attorneys "in accordance with the rules of procedure adopted by it. * * *"

The Judicial Articles of the Constitutions of the states of Washington and Minnesota are almost identical to Article IV, Section 1 of the Ohio Constitution, *supra*.

In *Petition for Integration of the Bar of Minnesota*, 12 N. W. 2nd 515 (1943), the Supreme Court of Minnesota said:

"The fundamental functions of the Court are the administration of justice and the protection of the rights guaranteed by the constitution. To effectively perform such functions, as well as those other ordinary duties, it is essenial that the court have the assistance and cooperation of an able, vigorous and honorable bar. It follows that the Court has not only the power, but the responsibility as well, to make any reasonable orders, rules, or regulations which will aid in bringing this about, and that the making of regulations and rules governing the legal profession falls squarely within the judicial power thus exclusively reserved to this Court."

The power to admit carries with it the power to suspend or disbar under such conditions as the Supreme Court of Ohio may, in its judicial discretion deem justifiable.

See *Beamer v. Waddell*, 45 N. E. 2nd 1020 (1943); *In re Harrison*, 109 N. E. 2nd 722 (1953); *Baker v. Keisker*, 142 N. E. 2nd 132, all decisions of the Supreme Court of Indiana.

Counsel for petitioner cite *Ex Parte Morris*, 8 O. C. C. N. S. 212, N. E. . (1906), affirmed without opinion in 77 Ohio St. 598, 84 N. E. 1129, which involved a question of contempt. That case held that it is the duty of the courts "to conform to a statute which does not abridge this (inherent) power but simply points out the manner in which it shall be exercised." We agree that the courts must conform to statutes where the statutes *do not abridge the inherent powers of the courts*. In this case, as in all matters of disbarment and discipline, the Supreme Court of Ohio has inherent power. This power permits it to establish the procedures represented by Rule XXVII. If Rule XXVII is in conflict with Sections 4705.02-4705.04 Ohio Rev. Code, then said statutes abridge the inherent power of the court.

The inherent power of the Supreme Court of Ohio over proceedings relating to the discipline of attorneys was re-iterated recently in *Mahoning County Bar Association vs. Franko*, 168 Ohio St. 17, N. E. 2nd (1958). The pertinent portions of the syllabus state:

"1. The Supreme Court of Ohio has inherent exclusive jurisdiction over the admission to the practice of law in Ohio. (Rule XIV, Rules of Practice of the Supreme Court of Ohio.)

2. The legal profession of Ohio includes every person who has been admitted to the practice of law in this state, by and under the rules for admittance thereto as adopted by the Supreme Court of Ohio, whose name is maintained on the Roll of Attorneys kept by such court, regardless of the subsequent capacity or status of such person.

3. The Supreme Court of Ohio has inherent jurisdiction over proceedings relating to the disciplining of members of the legal profession of this state, resulting from the Supreme Court's organization as such as well as from its inherent exclusive power of admission, and it may provide by rule both the basis for and the procedure to be followed with reference to such disciplining. (Paragraph one of the syllabus of *In re Thatcher*, 80 Ohio St., 492, and *Cleveland Bar Association v. Pleasant*, 167 Ohio St., 325, approved and followed.)

4. Rule XXVII of the Rules of Practice of the Supreme Court of Ohio provides a comprehensive procedure to activate the inherent duty and to implement the inherent power of that court to supervise the disciplining of members of the legal profession of Ohio."

(4) Petitioner Has Not Been Deprived of his Rights Under the Fourteenth Amendment.

The only specific reference to the Fourteenth Amendment appears on page 3 of petitioner's brief in the statement of questions for review, wherein petitioner contends that the Supreme Court of Ohio has deprived him of his constitutional rights without due process of law.

Throughout his brief petitioner complains about Rule XXVII as being unfair. As this Court will note, the rule provides all of the essential safeguards of justice and fair play in administrative and judicial matters. There is due provision for notice upon the respondent, full opportunity for a hearing and complete opportunity for review.

The desperation of petitioner's complaint about the rule is well demonstrated, by way of example, in the statement on page 53 of his brief when it is said:

> "There is no provision in the rule that the hearings conducted by the panel selected by the chairman of the Board of Commissioners shall be conducted in accordance with the rules of evidence, or that the hearings shall be conducted in a manner consonant with the requirements of a fair hearing as contemplated within the meaning of due process of law."

On the contrary, Paragraph 34 of Rule XXVII states:

> "*Rules of evidence.* All rules of evidence shall be observed in the conduct of all hearings and the respondent may be represented by counsel, who shall enter formal appearance."

Not only was the original panel chairmanned by a former judge but the other two members also are eminent lawyers in the State of Ohio. Indeed, the petitioner's counsel was so impressed with the fair conduct of the hearing that open acknowledgment was made of this fact, both by affirmative

comment and lack of any objection during the entire proceedings. The petitioner and his counsel recognized that the hearings were conducted in the highest tradition of judicial conduct.

Petitioner was charged with nothing new. More than anyone he was aware of all of the proceedings that led to the decision of the Supreme Court of Ohio in the *Wright* case, *supra*. At the hearing before the panel he produced evidence, without any complaint that he was caught by surprise or unable to proceed because of any lack of knowledge as to the nature of the charges against him.

The petitioner has gone to great length in making a collateral attack upon the *Wright* case on the ground that it was instituted by *amici curiae*. This is a new theory offered by the petitioner in the hope of avoiding suspension by the Supreme Court of Ohio. It is unnecessary to determine the validity of the argument in regard to *amici curiae* because the original complaint filed by the Cleveland Bar Association was founded not only upon the *Wright* case but also it charged that the petitioner was "guilty of misconduct within the meaning of Rule 27, paragraph 5 of the Supreme Court of Ohio."

Moreover, at the beginning of the hearing before the panel in response to a request by counsel for respondent, the petitioner was advised specifically that he had violated Sections 6, 29, 32, and 38 of the Canons of Professional Ethics.

NO CONSTITUTIONAL QUESTIONS ACTUALLY ARE AT ISSUE: THE SUPREME COURT OF OHIO COULD HAVE ACTED SUA SPONTE TO DISBAR OR DISCIPLINE PETITIONER.

The Supreme Court of Ohio had the right to act *sua sponte* to suspend Henry H. Pleasant, even if Rule XXVII did not exist.

This proceeding grew out of the decision of Supreme Court of Ohio in the *Wright* case, *supra*. In rendering that decision that Court said:

> "If we must abide, as we do, by the finding of the facts by the trier thereof and as sustained by the Court of Appeals, we necessarily must sustain the finding of fraud upon the Court by appellee."

Moreover, in regard to the matter of contempt, the Court further said:

> "In our opinion, a direct contempt of court is not confined to a disorderly or obstreperous act in the presence of the court itself. If the act constitutes a fraud upon the court and is such as to influence or persuade the court to make orders in its own courtroom, concerning which it probably would have done otherwise had the act not occurred, there is such an obstruction of justice as to constitute direct contempt.
>
> It must be remembered that contempt of court is directed to the court itself rather than toward an individual judge thereof."

In the *Thatcher* case, *supra*, the Supreme Court of Ohio said it "* * * has inherent jurisdiction of proceedings to disbar an attorney * * *." In the *McBride* case, *supra*, the Supreme Court of Ohio said that the power to admit attorneys "* * * and to disbar, suspend or otherwise discipline them after admission rest inherently in the judicial branch of the government."

If we combine the findings in the *Wright* case and the holdings in the *Thatcher*, *McBride* and *Franko* cases, they add up to the right of the Supreme Court of Ohio to act *sua sponte* to disbar or indefinitely suspend Henry H. Pleasant, regardless of any of the contentions of the petitioner in reference to Rule XXVII.

The Supreme Court of Ohio itself recognized its power to act *sua sponte* when it said in the *Pleasant* case:

> "The contention that the Supreme Court can not deny the inherent power of Courts of Common Pleas, with reference to disciplinary actions against attorneys, would be a matter of concern if that question were before us. However, since the present case is one in which only the inherent power of the Supreme Court to discipline an attorney is concerned, and since Rule XXVII only concerns itself, so far as the matter is now before us, with the procedure for exercising disciplinary action before this Court, we are impelled to hold that there is nothing unconstitutional about the rule so far as it applies to the present case."

CONCLUSION.

1. In 1940 Henry H. Pleasant was suspended by the Common Pleas Court of Cuyahoga County.

2. Based upon actions that took place in 1949 the Probate Court and Court of Appeals of Cuyahoga County and the Supreme Court of Ohio found respondent guilty of fraud upon the Probate Court. The Probate Court and the Supreme Court of Ohio likewise found that he was guilty of contempt.

3. Based upon a decision of the Supreme Court of Ohio in the *Wright* case in 1956 proceedings were instituted under Rule XXVII. As a result, under the procedures prescribed by that Rule, the Board recommended

to the Court that petitioner "be suspended from the practice of law for an indefinite period."

4. The recommendation of the Board was confirmed by the Supreme Court of Ohio in the *Pleasant* case.

5. Rule XXVII meets all of the requirements of due process and is not in conflict with the statutes and Constitution of the State of Ohio.

6. Quite apart from any constitutional issues, in regard to Rule XXVII, the Supreme Court of Ohio had the right, in this instance, to exercise its inherent power to discipline Henry H. Pleasant.

The law is an old and essential profession. Its standards, like Caesar's wife, should be above reproach. Its members should be above suspicion. The law touches the lives of all men. Lawyers are officers of the court. Lawyers share a major responsibility in the administration of justice. Justice is not served if their conduct transgresses their oath or their canons of professional ethics.

The courts have an obligation to reassure a sometimes cynical general public that no lawyer may be found guilty of perpetrating a fraud upon a court and continue to hold himself out as a member of a profession he has dishonored.

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

S. Burns Weston,
Terminal Tower, Cleveland, Ohio,

Russell C. Grahame,
Midland Bldg., Cleveland, Ohio,

Robert J. Grogan,
Leader Bldg., Cleveland, Ohio,

Attorneys for Respondent.